

**Additional Clarification Email sent to School Food Authorities on 1/11/13 from Jessica Sharkus, Director, DPI School Nutrition Team Regarding the Closing of Golden Guernsey Dairy in Waukesha**

We are diligently working with the USDA to help us sort through all of the possible situations that may be happening out there. The original email might be a bit confusing because it doesn't stipulate who the contract is with: the distributor or Golden Guernsey. If the contract was with the distributor and the distributor can obtain milk elsewhere at basically the same price, then nothing needs to change at all with that agreement – in fact the SFA should hardly be aware of any change. If the contract was with Golden Guernsey and the SFA wants to continue with the original RFP i.e. not issue another one or start looking for new vendors, then it would need to contact bidders #2 & #3 to see if they were still interested. If however the SFA doesn't feel it needs to continue with that RFP/contract, then it is free to start again, with a new RFP that can be for either a new vendor or a distributor. And an important point to keep in mind here is that though an SFA might have needed to formally bid at the beginning of the year, if all it is attempting presently is to obtain milk thru the end of this year, it might very well be the case that the value of sales between now and the end of this SY would fall below \$150,000 and the SFA could employ informal procurement processes to get it to the end of the year. But of course the SFA has to be pretty certain its purchases thru the end of the year will be below \$150,000.

Informal Procurement with Golden Guernsey: contact other bidders and accept best price and if the situation permits, new bidders could be distributors

Informal Procurement with a distributor: should continue with same distributor if they are able to provide milk at same or near same cost (price equity) to SFA

Formal Procurement with Golden Guernsey: if you want to utilize the same RFP, contact the original 2<sup>nd</sup> and 3<sup>rd</sup> place bidders. May use same RFP for the remainder of the current SY. If you prefer to start from the beginning again, the SFA not legally required to first contact those original 2<sup>nd</sup> and 3<sup>rd</sup> place bidders (a bid had gone out, it was awarded, the agreement was only between the SFA and the winning bidder; the winner did not fulfill its obligation, so now the contract is invalid, unless the SFA chooses to try and extend it by offering it to one of the other bidders). Keep in mind what was written above about original formal bids now potentially being informal thru the end of the year.

Formal Procurement with a distributor: must continue with the same distributor (otherwise the SFA would be liable to the distributor, since they would be cancelling the contract without cause) if they are able to provide milk at the same or near same cost to SFA. In fact the distributor might be obliged to continue selling the milk to that SFA at the same, agreed upon price, unless there is a clause that says in case of an emergency, when the distributor's supplier goes out of business and it has to obtain milk at a higher price, a renegotiation of price with the SFA could be possible. Again, it all depends on what is written in the contract. Another point: if the contract was good for longer than the end of this SY and the distributor guaranteed to the SFA that the Golden Guernsey closure would not affect its supplies or price, why would the

contract not be good for the length that was originally agreed upon. Unless the SFA could make the claim that something materially relevant had changed, I think they would be legally bound to respect all the clauses in the agreement it had with the distributor.

Please feel free to contact the School Nutrition Team if you have any further questions or concerns.  
Jessica